HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4077 of 2005
Date of decision : 06.02.2007

Karambir Singh .....Appellant

versus

Municipal Council, Thanesar .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.S.Longia, Advocate for the appellant
Mr.Vikram Chaudhary, Advocate for the respondent.

* * *

JUDGMENT

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for permanent injunction restraining the defendant from recovering any amount as house tax in pursuance of the notices dated 1.3.2003, Exhibit P-1 to P-6, was dismissed.

The plaintiff-appellant is owner of the residential house and several other properties situated in Ward No.5, Thanesar, District Kurukshetra. The defendant-Municipal Council has issued six bills for recovery of arrears of house tax. The said notices were challenged by the plaintiff, inter-alia, on the ground that no public notice under Sections 77, 78 and 79 of The Haryana Municipal Act, 1973 (hereinafter referred to as `the Act'), was issued by the defendant and that defendant has failed to comply with the mandatory procedure given under Sections 76 to 79, 94 and 95 of the Act. The objections filed by the plaintiff were not taken into

consideration and the notices Exhibit P-8 to P-13, for revision of the house tax, were illegally issued and no opportunity of hearing was granted to the plaintiff for making final assessment. It was also pointed out that the challenge of the plaintiff in respect of the earlier house tax assessment for the year 1997-98, is pending in a separate suit. The defendant contested the said suit and alleged that the bills Exhibit P-1 to P-6 have been issued for recovery of house tax in accordance with law and that the plaintiff has not availed the remedy of appeal under Section 99 of the Act and that the Civil Court has no jurisdiction to try and entertain the present suit. The Exhibit P-1 to P-6 are the house tax demand bills dated 1.3.2002 for the year 2001-02, in respect of six separate properties of the plaintiff. Exhibit P-8 to P-13 are the notices issued to the plaintiff under Section 78 of the Act, for the period 1.4.2001 to 31.3.2002. Exhibit P-14 are the objections dated 15.1.2002 and Exhibit P-17 is the order dated 15.10.2001, passed by the Municipal Council imposing house tax.

Both the Courts below have found that the complete procedure, established under the Act, was followed before issuance of the bills, Exhibit P-1 to P-6. The objections filed by the plaintiff, Exhibit P-14, to the notices Exhibit P-8 to P-13, were considered by the Sub Committee constituted on 14.1.2002, vide Exhibit P-15. It has been further found by the learned First Appellate Court that the counsel for the plaintiff had represented the plaintiff before the defendant and the bills were received by him. Therefore, in view of the provisions of the Act, it was held that jurisdiction of the Civil Court is barred as tax has been imposed after complying with the provisions of the Act.

Learned counsel for the appellant has vehemently argued that the claim of the defendant in issuing notices Exhibit P-1 to P-6, is beyond the period of limitation and, therefore, the Civil Court will have the jurisdiction to try and entertain the present suit.

Learned counsel for the respondent has relied upon a judgment, reported as ***"A.I.R.1979, Supreme Court-1250, Munshi Ram and others versus Municipal Committee, Chheharta",*** to contend that the jurisdiction of the Civil Court is barred.

However, the said argument is factually not available to the appellant. The bills, Exhibit P-1 to P-6, in respect of six properties of the appellant, were issued on 1.3.2002 for the year 2001-02. Therefore, the plea that demand has been raised after the expiry of the period of limitation, is not available in the present case. In fact, no such argument was raised before the learned Courts below must be realizing that the demand raised through bills Exhibit P-1 to P-6 cannot be said to be beyond the period of limitation.

In the absence of any such plea being factually available with the plaintiff, the findings recorded by the Courts below that jurisdiction of the Civil Court is barred, cannot be said to be suffering from any patent illegality or irregularity, which may give rise to any substantial question of law in second appeal for consideration of this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

February 06, 2007
**mohinder*